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EXAMINER

HECKERT, JASON MARK

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/528,830
Filing Date: March 23, 2005
Appellant(s): LEE ET AL.

Yong Choi
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/21/10 appealing from the Office action mailed 10/20/09.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-5, 8, 10, 25, and 26 are pending.

Claims 1-5, 8, 10, 25, and 26 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

NEW GROUND(S) OF REJECTION

Claims 1-5, 8, 10, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinsson OR Johnson in view of Hoffman and further in view of Suzuki et al as evidenced by Collins English Dictionary.

Claim 1-5, 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon in view of Martinsson or Hoffman and further in view of Suzuki as evidenced by Collins English Dictionary.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1-5, 8, 10, and 25 under 35 USC 112 for indefiniteness is withdrawn. The rejection of claims under 1-5, 8, 10, 25-26 under 35 U.S.C. 103(a) as being unpatentable over Martinsson OR Johnson in view of Hoffman and further in view of Riegel is withdrawn. The rejections of claims 1-5, 26 under 35 U.S.C. 103(a) as being unpatentable over Yoon in view of Martinsson OR Johnson in view of Hoffman and further in view of Riegel is withdrawn.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

6062049	Martinsson	5-2000
3685338	Hoffman	8-1972
4854054	Johnson	8-1989
4687614	Suzuki	8-1987

WO 03/008696, Yoon, Ju Han. 1-2003 "Drum Device for Home Appliance"

Collins English Dictionary - Complete and Unabridged, HarperCollins Publishers, 2003
accessed at: <http://www.thefreedictionary.com/butt+joint>

(9) Grounds of Rejection

NEW GROUND(S) OF REJECTION

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8, 10, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Martinsson OR Johnson in view of Hoffman and further in view of Suzuki et al as evidenced by
Collins English Dictionary. In figure 5, Martinson depicts a cylindrical drum 12 made of
stainless steel having reduced parts at opposite ends of the cylindrical body. A folded edge, or
bent part, exists on the reduced part as shown below.



The reduced part has a continually reduced diameter. Any part of the reduced part can read on “connection part” as it is a very broad limitation. Johnson also shows a drum comprising first and second diameters, with a bent portion (see figure 1). Hoffman discloses the use of hems in sheet metal forming (col. 1 lines 1-40 and figures 4-7). It would have been obvious at the time of the invention to modify Martinsson OR Johnson and include folds on the edges, as disclosed by Hoffman, in order to prevent weak and dangerous edges in the metal. The examiner considers the phrase, “wherein the first diameter is not expanded;” to be a process of making the claimed product. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In *re Thorpe* 777 F.2d 695, 698, 227 USPQ 964,966 (Fed Cir. 1985) “We are therefore of the opinion that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith.” In *re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

Martinsson and Johnson disclose the structural features of the product claimed, and the process of expansion is not considered to be a patentably distinguishable feature. Martinson discloses that joint pressing (note item 67) and welding (col. 1 line 20) are common in washing

machine construction. Furthermore, it is known in the art to press and weld drums during construction. Suzuki discloses a high integrity container in the shape of a drum. The drum can be made of any material and shape as long as it is composed of a cylindrical body member shaped from a metal sheet joined at its two ends by a seam welding or butt welding. According to Collins English Dictionary, a butt joint is, "a joint between two plates, planks, bars, sections, etc., when the components are butted together and do not overlap or interlock. The joint may be strapped with jointing plates laid across it or welded (**butt weld**)". Thus, butt welding implies that there is no overlap between the sections of the drum. It would have been obvious at the time of invention to modify Martinsson OR Johnson in view of Hoffman, as stated above, and use welding techniques and machine pressing, as disclosed by Suzuki, as these are well known methods of drum construction from sheet metal.

In regards to claims 8 and 10, changes in shape or form have been held to be obvious. *In re Dailey* 149 USPQ 47, 50 (CCPA 1966). Additionally, a change of size is generally recognized as being within the ordinary level of skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). It is well settled that determination of optimum values of cause effective variables, such as these dimensions, is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980). It has been held that where the general conditions of the claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art.

Claim 1-5, 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon in view of Martinsson or Hoffman and further in view of Suzuki as evidenced by Collins English Dictionary. Yoon discloses a drum with a cylindrical part, reduced parts, vibration reducing

bands 40, and beads 32. Yoon does not disclose bent parts. Martinsson discloses a folded edge, or bent part, existing on a reduced part. Hoffman discloses that hemming edges is well known in sheet metal processing. The claimed elements were known in the prior art and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. The process used to make the drum is not given patentable weight.

The combination of Yoon in view of Martinsson or Hoffman discloses all of the structural components of the appellant's invention. However, said prior art is silent as to the methods of drum construction. Martinson discloses that joint pressing (note item 67) and welding (col. 1 line 20) are common in washing machine construction. Furthermore, it is known in the art to press and weld drums during construction. Suzuki discloses a drum with a butt welded seam (col 5 lines 20 - 45). It would have been obvious at the time of the invention to modify Yoon in view of Martinsson or Hoffman and include a hemmed edge, as stated above, and further utilize butt welding in the construction of the drum as is known in the art by Suzuki.

(10) Response to Argument

The appellant's arguments are rendered moot in view of the new grounds of rejection. In the new grounds, Suzuki teaches that butt welding is established in the art of fashioning cylindrical drums. Collins English Dictionary clarifies that butt welding involves abutting edges without overlap. Thus, one of ordinary skill is well aware of butt welding and its use in the sheet metal industry. Considering that laundry drums are fashioned from sheet metal by welding and joint pressing, as shown by Martinsson, it would have been obvious to one of ordinary skill at the time of invention to modify said references and include a butt welded seam, as taught by Suzuki.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of

rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,
Jason Heckert

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

Conferees:

/Michael Barr/

/M. B./

Supervisory Patent Examiner, Art Unit 1711

/Benjamin L. Utech/

Primary Examiner